

Aslam (Migration) [2022] AATA 1402 (19 May 2022)

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DECISION RECORD

DIVISION: Migration & Refugee Division

APPLICANT: Mr Shehzad Aslam

CASE NUMBER: 2111467

HOME AFFAIRS REFERENCE(S): BCC2021/165533

MEMBER: Jennifer Cripps Watts

DATE: 19 May 2022

PLACE OF DECISION: Sydney

DECISION: The Tribunal affirms the decision not to grant the applicant a Student (Temporary) (Class TU) visa.

Statement made on 19 May 2022 at 1:24pm

CATCHWORDS

MIGRATION – Student (Temporary) (Class TU) visa – Subclass 500 (Student) – bogus document given with visa application – bank statement in name of financial sponsor – departmental checks – ‘ghost bank’ associated with large number of student visa applications – information provided in response to department’s and tribunal’s requests – verification letter not reliable evidence – standard of reasonable suspicion – statement may be bogus even if bank is legitimate – no compassionate or compelling circumstances to waive requirements – decision under review affirmed

LEGISLATION

*Migration Act 1958 (Cth), ss 5(1)(b), 57, 65, 359A, 375A(2)(b)
Migration Regulations 1994 (Cth), Schedule 2, cl 500.217(1), Schedule 4, criterion 4020(1), (4)*

CASE

Kaur v MIBP [2017] FCAFC 184

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

5. This is an application for review of a decision made by a delegate of the Minister for Home Affairs on 11 August 2021 to refuse to grant the applicant a Student (Temporary) (Class TU) visa under s 65 of the *Migration Act 1958* (Cth) (the Act).
6. The applicant applied for the visa on 27 January 2021. The delegate refused to grant the visa on the basis that the applicant did not satisfy the requirements of cl 500.217 of Schedule 2 to the *Migration Regulations 1994* (Cth) (the Regulations) because he did not meet Public Interest Criteria (PIC) 4020.
7. The applicant appeared before the Tribunal by MS-Teams audio visual on 24 January 2022 to give evidence and present arguments.
8. At the time the review application was made, the applicant was represented by a registered migration agent, Mr M. Nasir Nawaz. On 19 January 2022, Mr Nawaz' representation was withdrawn by the applicant. The applicant was represented when the review application was made, but not at the time of the Tribunal hearing.
9. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

10. Subclause 500.217(1) of Schedule 2 to the Regulations requires that the applicant satisfy public interest criteria 4001, 4002, 4003, 4004, 4010, 4013, 4014, **4020** and 4021.
11. The issue in this review is whether the visa applicant meets Public Interest Criterion 4020 (PIC 4020) as required by cl 500.217 for the grant of the visa, the same substantive issue on which the visa was refused.. Broadly speaking, this requires that:
 - there is no evidence that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal, a relevant assessing authority, or Medical officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to the application for the visa or a visa that the applicant held in the 12 months before the application was made: PIC 4020(1); and
 - the applicant and each member of the family unit has not been refused a visa because of a failure to satisfy PIC 4020(1) during the period starting 3 years before the application was made and ending when the visa is granted or refused, unless the applicant was under 18 at the time the application for the refused visa was made: PIC 4020(2) and (2AA); and
 - the applicant satisfies the Minister as to his or her identity: PIC 4020(2A); and
 - neither the applicant nor any family unit member has been refused a visa because of a failure to satisfy PIC 4020(2A) during the period starting 10 years before the application was made and ending when the visa is granted or refused, unless the applicant was under 18 at the time the application for the refused visa was made: PIC 4020(2B) and (2BA).

12. The requirements in PIC 4020(1) and (2) can be waived if there are certain compelling or compassionate reasons justifying the granting of the visa: PIC 4020(4). However, this waiver does not apply to the identity requirements in PIC 4020(2A) and (2B). PIC 4020 is extracted in the attachment to this decision.
13. At the commencement of the Tribunal hearing, the meaning of bogus document was explained to the applicant. He was reminded that even if the Tribunal ultimately decides that he does not meet the PIC 4020(1) criteria, the Tribunal will go on to consider if there were circumstances (as described in PIC 4020(5)) that would justify waiving the criteria, if he made such a claim, before making a decision on the review.

Has the applicant given, or caused to be given a bogus document, or information that is false or misleading in material particular?

14. The applicant's visa was refused because it was found by the delegate that a document that the applicant had provided in support of the application was a bogus document, and that the applicant had given the document to the Minister in relation to the application for the visa. The Tribunal is deciding on this same substantive issue on the review.
15. The term 'bogus document' is defined in s 5(1) of the Act:
 16. **bogus document**, in relation to a person, means a document that the Minister reasonably suspects is a document that:
 17. (a) purports to have been, but was not, issued in respect of the person; or
 18. (b) is counterfeit or has been altered by a person who does not have authority to do so; or
 19. (c) was obtained because of a false or misleading statement, whether or not made knowingly.
20. The requirement in PIC 4020(1) not to provide a bogus document applies whether or not the Minister became aware of the bogus document or because of information given by the applicant: PIC 4020(3). It also applies whether or not the document was provided by the applicant knowingly or unwittingly.
21. The Tribunal has considered information on the Department and Tribunal files relevant to the substantive issue on review. When the hearing invitation was sent, the applicant was invited in writing to provide any additional evidence in support of his application. He was also invited to comment on or respond to adverse information contained in documents on the Department file specified in a Non-Disclosure Certificate (NDC) issued under s.375A of the Act, signed and dated 6 January 2022..
22. The visa was refused because the delegate held a reasonable suspicion that the applicant provided a bogus document relating to the visa application. The document in question, that was found by the delegate to be a **bogus document** as defined in s.5(1) of the Act, is a two page document:
 - An Account Maintenance Certificate dated 21 January 2021 and Statement of balance as at 20 January 2021 of Rs.4,000,000 (the AMC document), purportedly issued by the Invest Capital Investment Bank Limited (ICIBL), Head Office, 2-H, Gulberg II, Lahore, Pakistan (ICIBL) in the name of the financial sponsor Javed Aslam, the brother of the applicant. It is indicated in the AMC document that the deposit was made on 13 January 2021. The AMC document is signed but the names of the two signatories are not included.
23. The Department's s.57 natural justice letter and the applicant's response

24. When assessing the visa application, on 25 June 2021 the Department sent a letter to the applicant visa his appointed migration agent, Baoyan Zhang, pursuant to s.57 of the Act, commonly referred to as a natural justice letter. In the letter he was informed, among other things, that a Departmental Officer had conducted checks to confirm the information in the AMC document and concluded; there are no bank offices at the address (on the AMC document), the telephone number is registered with Pakistan Telecommunication Company but is listed to a business that is not ICIBL; and ICIBL does not operate as a genuine bank for financial purposes. The applicant reproduces these points and provides comment in his written responses.
25. A response was received by the Department, from the applicant, on 23 July 2021:
- Form 957 appointing a new migration agent, M. Nasir Nawaz
 - A signed but undated written submission from Mr Nawaz, who states that he makes the submissions on behalf of his client, including these matters and referring to documents that were attached to the submission:
 - ICIBL is a finance institution as defined in Financial Institutions (Recovery of Finances) Ordinance, 2001 (Pakistan), s.2:
 - 26. *‘(i) any company whether incorporated within or outside Pakistan which transacts the business of banking or any associated or ancillary business in Pakistan through its branches within or outside Pakistan and includes a government savings bank, but excludes the State Bank of Pakistan;*
 - 27. *(ii) a modaraba or modaraba management company, leasing company, investment bank, venture capital company, financing company, unit trust or mutual fund of any kind and credit or investment institution, corporation or company; and*
 - 28. *(iii) any company authorized by law to carry on any similar business, as the Federal Government may by notification in the official Gazette, specify;’*
 - The applicant’s brother/financial sponsor obtained the documents from ICIBL and gave them to the applicant
 - The applicant provided the AMC document ‘in good faith and with bona fide intention’
 - The Allied Bank statement in the name of the applicant’s wife shows that he has financial capacity to support himself while studying
 - The phone number on the Pakistan Telecommunications Company Limited (PTCL) bill is that of ICIBL
 - PIC 4020 is not engaged, because
 - The AMC document was provided by the applicant’s brother from a ‘legit financial institution’, ICIBL, operating legally in Pakistan and the AMC document was ‘submitted by the applicant in good conscience to support his application’ and ‘is genuine and satisfies PIC 4020’

- The brother of the applicant would ‘never intend to provide any document’ that would spoil his brother’s ‘bright future’
- Mr Nawaz attached supporting documents to the response sent to the Department on 23 July 2021, including:
 - Licence to carry out investment finance services from the Security Exchange Commission of Pakistan (SECP) dated 20 March 2020, valid for three years,
 - A printout from the SECP showing online verification
 - Copy of an online printout of the Pakistan Stock Exchange showing ICIBL company details
 - PTCL telephone bill in the name of ICIBL
 - Quarterly Reports of ICIBL Sep 2020 and March 2021
 - Financial Results of ICIBL March 2021 and half year
 - Affidavit of Javed Aslam, the applicant’s brother/financial sponsor
 - Statement of financial support and Bank Statement of the applicant’s wife, Hina Shehzad, from Allied Bank
 - Account Maintenance Certificate from Allied Bank, Islamabad, dated 12 July 2021
 - Letter on ICIBL letterhead, dated 14 July 2021, signed by M. Aamer Ramzan (Manager Operations), essentially refuting the concerns raised in the Department’s s.57 letter, which he reproduces in the letter with his comments; the Department’s ‘objections are not fact based and ICIBL is located at 2-H, Gulberg II, Lahore; the PTCL telephone bills are in the name of ICIBL; and ICIBL is a public limited incorporated company engaged in the business of leasing and investment finance activities as a Non-Banking Finance Company (NBFC) and regulated by the SECP.

29. The review application and s.375A non-disclosure certificate

30. A copy of the NDC (Department Ref ID number ADD2022/50736), was provided to the applicant with the s.359A letter sent by the Tribunal. The NDC was issued under s.375A of the Act which, in summary, covers information that is not to be disclosed to anyone but the Tribunal for reasons of public interest. It is a requirement, pursuant to s.375A(2)(b) of the Act, that the Tribunal, having been given the document or information, ‘must do all things necessary’ to ensure it is not disclosed to any other person. However, the Tribunal may provide an applicant with the gist, or essence, of the information that is the subject of the NDC.
31. The NDC refers to specific TRIM file numbers on the Department file. The copy of the NDC provided to the Tribunal, contained on the Department electronic file in the Tribunal system, and the Tribunal is satisfied it is dated 6 January 2022 and electronically signed by a Delegate of the Minister for Home Affairs and Delegate of the Secretary of the Department of Home Affairs (position number included).

32. On 14 January 2022, the Tribunal wrote to the applicant informing him of adverse information, pursuant to s.359A of the Act. The applicant was invited to comment on or respond to certain information which, subject to his comments or response, would be the reason or a part of the reason for affirming the decision under review; the information was particularised and reasons given why. The pertinent part of the letter is as follows:

'The Department has placed on your visa application file a non-disclosure certificate, relating to investigative reports into the Invest Capital Investment Bank (ICIBL). The certificate was issued by a delegate of the Minister for Immigration on 6 January 2022 under s 375A of the Migration Act 1958 (the Act). A copy of the s.375A certificate is attached and you are invited to comment on the validity of the certificate. The Tribunal is of the view that the certificate is legally valid.

Your visa was refused because you did not meet the Public Interest Criteria 4020 (PIC 4020). This was because a statement you provided in support of your student visa application, that is the subject of this review, was found to be a bogus document. The relevant two - page document that you provided, which is on the Department file, is:

- *Account Maintenance Certificate from Invest Capital Investment Bank (ICIBL) located at 2-H, Gulberg-II, Lahore, Telephone Number: (92 42) 35777285-86, issued on 21 January 2021, in the name of Mr Javed Aslam.*

The Account Maintenance Certificate from ICIBL (the statement), Department Document ID 8835805, provided by you in support of the visa application on 27 January 2021, is attached for your ease of reference.

A delegate of the Minister for Home Affairs has certified, in accordance with s.375A of the Act, that the disclosure of the specified TRIM reference numbers for file number ADD2021/6458809 and ADD 2021/6458791, other than to the Administrative Appeals Tribunal (AAT), would be contrary to the public interest because it would reveal investigative methods, identities of personnel who have not consented to further disclosure, and to information sharing arrangements with a foreign country. These documents relate to the investigation into ICIBL.

The AAT must do all that is necessary to ensure the documents or information are not disclosed to anyone other than a member of the AAT. We may, however, provide you with the gist of the information, which we have chosen to do in your case, as follows:

- a) *In early 2021, the ICIBL was identified as a bank of concern in the Pakistan student visa caseload and an investigation was undertaken relating to a large number of student visa applications with the statement of funds provided by ICIBL.*
- b) *Through the investigation, it is reported;*
 - a. *ICIBL has been identified as a 'ghost' bank*
 - b. *ICIBL has provided statements, to students from Pakistan applying for an Australia student visa, of funds that do not exist or do not belong to the student visa applicant or their financial sponsors*
 - c. *The arrangements were made by a third party, for payment of a fee.*
 - d. *The student visa applicants were referred to or put in touch with the third party by the head office verification officer at ICIBL*
- c) *The statement given by you to the Minister, in support of your subclass 500 student visa application made on 27 January 2021, contains features that were identified in the investigation as common in documentation issued by ICIBL. In particular, the bank statement you provided lists a single large credit to the account, and no other transactions.*

This information is relevant because you provided the statement as evidence of your having access to sufficient funds to support yourself during your stay in Australia, relating to the subclass 500 student visa application you lodged on 27 January 2021. If the Tribunal relies on the above information relating to the investigation into ICIBL that is included in the documents with the folio numbers specified in the s.375A nondisclosure certificate, the

Tribunal may reasonably suspect that the statement you provided in relation to a person is a bogus document, as defined in s.5(1) of the Migration Act 1954, because it is counterfeit or has been altered by a person who does not have authority to do so. In which case, you would not meet public interest criterion 4020(1). This would be the reason, or a part of the reason, for affirming the decision that is under review.

33. You are invited to give comments on or respond to the above information in writing.'

34. The Tribunal hearing and the applicant's oral and additional documentary evidence

35. At the Tribunal hearing, the applicant gave oral evidence about his study in Australia. The applicant completed a Masters of Professional Accounting and then held a post-graduate visa for two years, then had planned to get an internship, but instead went back to Pakistan. When he returned to Australia, on 27 January 2021 the applicant applied for the student visa that is the subject of this review planning to undertake a Diploma in Leadership.
36. The Tribunal received the following documents from the applicant in support of the application:
- A letter signed by Javed Aslam, undated, stating that he has money deposited in ICIBL. He provides the account number, says that the bank is keeping his deposit and that he is happy with its services; the response to the Department's
 - The applicant's typewritten statement, undated, in which he includes that the AMC document is genuine, that it is not possible that all the accounts at ICIBL are 'fake', he believes 'maybe a few accounts are based on fake documentation', he is not aware that the bank has a 'bad reputation on international level and is involved in fraudulent activities', and that once he found out, he provided a new account maintenance certificate from Allied Bank in the name of his wife.
 - Another typewritten statement, undated, in which the applicant responds to the adverse information in the Tribunal's s.359A letter sent on 14 January 2022, itemised at points a., b., c. and d. in the letter, including in response that:
 - (point a.) ICIBL is licensed and registered to carry out investment finance services as a NBFC
 - (point b.) any organisation may have the potential 'for some malpractice', ICIBL is conducting its operations legally in Pakistan and has 'not been provided guilty in any court of law about the above written accusation (point b.). It is innocent until proven otherwise'.
 - (point c.) the applicant refers to his brother's typed statement where he states that he 'deposited the funds and he is happy with the services'
 - Relating to the point that a common feature of the accounts investigated was that there was one large single credit to the account and no other transactions, the Department can 'ask the question about the source of funds, and it can be provided'

- The applicant concludes by saying that the AMC document is ‘completely genuine’, obtained by his brother, given to the applicant, and that it was ‘not altered or tampered by any third party. It was issued by ICIBL, and they have already endorsed it in their response letter’. (dated 14 July 2021) And that a three year ban is ‘unfair’.
 - Several duplicate documents, including the SECP licence dated 20 March 2020; letter from M. Aamer Ramzan dated 14 July 2021 in response to the Department’s s.57 notice
37. The above submissions have been considered. The Tribunal accepts that the applicant has provided information indicating that ICIBL is licensed and registered to carry out investment and finance services as a NBFC in Pakistan. A criminal standard of proof is not required for a finding to be made that a document is a bogus document, the Tribunal need only hold a ‘reasonable suspicion’ that the AMC document is a bogus document. The applicant’s submission that his ‘... brother has provided written statement about the verification of his funds’, has been considered. However, in circumstances where the AMC document itself may be counterfeit, this casts doubt over the veracity of any further information that may have been obtained from a person at the bank who, in addition, may have been recommended by a third party for a fee.
38. The applicant has been informed by the Tribunal that his AMC document was identified in the investigation into ICIBL and that it contains features identified as common in documentation issued by ICIBL, including that they showed only one large single transaction for funds that do not actually exist. The AMC document and a letter from M. Aamer Ramzan (Operations Manager), signed and dated 14 July 2021 on ICIBL letterhead, was obtained by the applicant’s brother, Javed Aslam, and then the applicant’s brother gave the AMC document and the later letter from M. Aamer Ramzan to the applicant. Following the investigation that is referred to in the documents identified in the NDC, it was concluded as a result of the investigation that an employee of ICIBL was issuing the AMC documents referring to funds that do not exist or do not belong to the financial sponsor whose name is on the AMC document. The Tribunal considers it possible that the applicant’s brother dealt with the same person he obtained the AMC document from when he obtained the letter from M. Aamer Ramzan that is dated 14 July 2021 directly addressing the Department’s concerns raised in the natural justice letter. At the very least, the applicant’s brother seems to have dealt with a person at ICIBL who considered themselves to be in a position to provide the verification letter. The Tribunal does not, in the circumstances, consider the letter dated 14 July 2021 to be reliable evidence in support of the claim by the applicant that the AMC document is not a bogus document.
39. The applicant’s submission that any bank could provide statements to students from Pakistan applying for an Australian student visa and that all ICIBL accounts cannot be fake are both reasonable propositions. However, they are broad statements, not probative evidence, and are not directly relevant the issue on review.
40. A simple Google search confirms that ICIBL is engaged in the business of leasing and investment finance activities as a NBFC and regulated by the SECP, is listed on the Pakistan Stock Exchange, as claimed by the applicant with supporting probative evidence, and that it conducts financial transactions and operates legally in Pakistan. The address of the head office as it is indicated on the SECP website is at the Lahore address that is included on the AMC document. The Tribunal accepts that the ICIBL head office is situated at Gulberg II, Lahore. The telephone account bills that have been provided, for these reasons, are accepted as being those of ICIBL at the Lahore address.

41. The applicant submits that he provided the AMC document in good faith and with bona fide intention. However, PIC 4020 only requires evidence that a bogus document has been submitted, not that a document that has been submitted is bogus.
42. It is acknowledged that the applicant has provided evidence that appears to confirm he has the financial capacity to support himself if he is granted a student visa. The evidence is acknowledged, but the financial capacity of the applicant is not a material issue on review.
43. The submission on behalf of the applicant by his former representative, that PIC 4020 is not engaged, is misinformed. It does not follow, if it is accepted that ICIBL is a 'legit financial institution', that the AMC document provided by the applicant is 'genuine and satisfies PIC 4020'. There is still the question of whether the AMC document is a bogus document, and whether it was given by the applicant in relation to the visa application to a person specified in PIC 4020(1).
44. Other matters
45. When the s.359A letter was sent to the applicant by the Tribunal on 14 January 2022, a copy of the NDC from the electronic Department file held by the Tribunal was attached. The copy of the NDC on the Department file in the Tribunal's electronic case system is signed and it is this copy of the NDC that the Tribunal considered the validity of and referred to in the s.359A letter that was sent to the applicant. However, the electronic copy that was attached to the Tribunal's email that was sent to the applicant did not capture the signature of the delegate. The Tribunal is satisfied that it was only the signature of the delegate that was not captured, and that all other information was captured in the copy of the NDC that was sent to the applicant.
46. The applicant attended the Tribunal hearing on 24 January 2022 and, at the beginning of the hearing, was reminded that he had been made aware in writing of a NDC on the Department file and that the Tribunal had provided him with the gist of the information contained in the documents identified in the NDC. The applicant was referred to the date by which his comments or response were due, 28 January 2022, and told that he did not need to respond to the information or comment on it at the Tribunal hearing because he had until 28 January. The applicant had already provide a written response. In addition, he gave oral evidence touching on the information at the hearing.
47. The issue relating to the incomplete copy of the NDC was not noticed until after the Tribunal hearing and, on 27 January 2022, the Tribunal sent the applicant a complete copy of the NDC, where the signature had been captured before it was electronically despatched, and an explanation about why the previous copy of the NDC sent to him on 14 January 2022 did not show the delegate's signature. The applicant was informed that he could have additional time, specified as until 11 February 2022, to respond to or comment in writing on the information and on the validity of the NDC. He provided additional written evidence which has been considered.
48. The Tribunal has considered all relevant evidence material to the substantive issue on review, including information on the Department and Tribunal files, the applicant's oral evidence and other relevant information. The Tribunal gives significant weight to the veracity of the information in the reports identified in the NDC, obtained as a result of the Department's investigations.
49. The Tribunal reasonably suspects that the AMC document provided, relating to the application for the visa, is a bogus document that is counterfeit or has been altered by a person who does not have authority to do so: s.5(1)(b) of the Act.

50. The Tribunal finds that there is evidence before it that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal, a relevant assessing authority or a Medical Officer of the Commonwealth a bogus document as defined in s.5(1)(b) of the Act that the Tribunal reasonably suspects is a document that is counterfeit or has been altered by a person who does not have authority to do so, in relation to the visa application.

51. Therefore, the applicant does not meet PIC 4020(1).

Should the requirements of PIC 4020(1) or (2) be waived?

52. The requirements of PIC 4020(1) and (2) may be waived where there are compelling circumstances that affect the interests of Australia, or where there are compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident, or an eligible New Zealand citizen (as defined in reg 1.03), that justify the granting of the visa. The decision-maker must first be satisfied that there are such circumstances, then must consider whether to exercise the discretion to waive the requirements, having regard to those circumstances: *Kaur v MIBP* [2017] FCAFC 184.

53. The expressions 'compelling circumstances' and 'compassionate or compelling circumstances' are not defined for these purposes. To be compelling, the circumstances must force or drive the decision-maker irresistibly to be satisfied. The ordinary meaning of 'compassionate' relates to feelings of sympathy, sorrow, pity or concern for others.

54. The applicant was asked if he claimed either of the waiver provisions in PIC 4020(4), that is, whether there are:

- compelling circumstances that affect the interests of Australia (PIC 4020(4)(a)); or
- compassionate or compelling circumstances that affect the interests of an Australian citizen, Australian permanent resident or an eligible New Zealand citizen (PIC 4020(4)(b))

55. that justify the granting of the visa.

56. There has been no claim by the applicant, nor is there any evidence before the Tribunal, that satisfies the Tribunal that the requirements should be waived.

57. Therefore the requirements of PIC 4020(1) should not be waived.

58. Conclusion

59. On the basis of the above, the applicant does not satisfy PIC 4020 for the purposes of cl 500.217.

DECISION

60. The Tribunal affirms the decision not to grant the applicant a Student (Temporary) (Class TU) visa.

Jennifer Cripps Watts
Member

ATTACHMENT

Migration Regulations 1994

Schedule 4

- 4020 (1) There is no evidence before the Minister that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal during the review of a Part 5 reviewable decision, a relevant assessing authority or a Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to:
- (a) the application for the visa; or
 - (b) a visa that the applicant held in the period of 12 months before the application was made.
- (2) The Minister is satisfied that during the period:
- (a) starting 3 years before the application was made; and
 - (b) ending when the Minister makes a decision to grant or refuse to grant the visa;
- the applicant and each member of the family unit of the applicant has not been refused a visa because of a failure to satisfy the criteria in subclause (1).
- (2AA) However, subclause (2) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.
- (2A) The applicant satisfies the Minister as to the applicant's identity.
- (2B) The Minister is satisfied that during the period:
- (a) starting 10 years before the application was made; and
 - (b) ending when the Minister makes a decision to grant or refuse to grant the visa;
- neither the applicant, nor any member of the family unit of the applicant, has been refused a visa because of a failure to satisfy the criteria in subclause (2A).
- (2BA) However, subclause (2B) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.
- (3) To avoid doubt, subclauses (1) and (2) apply whether or not the Minister became aware of the bogus document or information that is false or misleading in a material particular because of information given by the applicant.
- (4) The Minister may waive the requirements of any or all of paragraphs (1)(a) or (b) and subclause (2) if satisfied that:
- (a) compelling circumstances that affect the interests of Australia; or
 - (b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen;
- justify the granting of the visa.
- (5) In this clause:
- information that is ***false or misleading in a material particular*** means information that is:
- (a) false or misleading at the time it is given; and
 - (b) relevant to any of the criteria the Minister may consider when making a decision on an application, whether or not the decision is made because of that information.

...

Migration Act 1958

s 5 Interpretation

(1) In this Act, unless contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly.

...